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SECRETARIAT OF THE ODISHA LEGISLATIVE ASSEMBLY

NOTIFICATION

The 2nd May, 2013

No. 5861/L.A.— The following decision, dated the 2nd May, 2013 of the Speaker, Odisha Legislative Assembly given under paragraph 6 (1) of the Tenth Schedule to the Constitution of India is hereby notified and published for general information:—

**“DECISION OF THE SPEAKER, ODISHA LEGISLATIVE ASSEMBLY  
UNDER PARAGRAPH 6(1) OF THE TENTH SCHEDULE TO THE  
CONSTITUTION OF INDIA**

Four separate disqualification petitions have been filed by Shri Utkal Keshari Parida, the President of the State unit of the Nationalist Congress Party (N.C.P.), who is not a Member of the Odisha Legislative Assembly under the 10th Schedule to the Constitution of India and the provisions contained in the Members of Odisha Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1987 hereinafter referred to in short as the Rules 1987 on 10th July, 2012 before the Secretary of Odisha Legislative Assembly. The said disqualification petitions were placed before me on 24th July, 2012. The copies of the disqualification petitions along with the annexures were forwarded to the four M.L.As. against whom the disqualification petitions were filed to offer their comments by order dated the 8th August, 2012. After receipt of the said petition and the annexures, the respondent M.L.As. filed four separate replies on 29th August, 2012. While the matter was pending before me, the petitioner approached the Hon'ble High Court of Odisha on 13th August, 2012 by filing four separate writ petitions bearing WP (C) Nos. 14868, 14869, 14870 and 14871 of 2012 with the prayer for issuance of a direction to the Speaker for disposal of the disqualification petitions expeditiously preferably within a period of four weeks. The Secretary on behalf of the Speaker, Odisha Legislative Assembly filed preliminary objection before the Hon'ble High Court of Orissa questioning the *locus standi* of the petitioner to present such disqualification petition in view of the embargo contained in sub-Rule(2) of Rule 6 of the Rules, 1987.

2. The Hon'ble High Court of Orissa in a common judgment and order dated the 27th September, 2012 in the four writ petitions was pleased to hold in paragraph 14 of the judgment as follows:

“Having regard to the aforesaid provisions of law and the law enacted thereunder, we are not inclined to accept the contention that a Member of a Legislative Assembly can alone file the petition because the same would be in blatant violation of the object and intendment of the Tenth Schedule inserted by Fifty-Second Amendment of the Constitution. Therefore, we hold that the disqualification petitions filed by the petitioner, who is the President of NCP, are maintainable under Rule 6 of the Rules. Accordingly, we answer the point No.(i) in favour of the petitioner.”

3. Feeling aggrieved with the judgment of the Hon'ble High Court of Orissa, the Speaker decided to prefer Special Leave Petition against the said judgment and order of the Hon'ble High Court. Accordingly, the Secretary of the Odisha Legislative Assembly on being duly authorized by the Speaker filed four separate Special Leave Petitions before the Hon'ble Supreme Court of India on 7th November, 2012. The Hon'ble Supreme Court vide its judgment and order dated 17th January, 2013 while upholding the judgment of the Hon'ble High Court of Orissa regarding the *locus standi* of the petitioner to present the disqualification petition was pleased to dismiss the Special Leave Petitions filed by the Speaker. Since the issue involved in the Special Leave Petition pertained to interpretation of the Constitutional provisions enshrined in Para. (8) of the 10th Schedule of the Constitution of India, the Speaker decided to prefer review petition provided under the Supreme Court Rules against the judgment of the Hon'ble Supreme Court, *inter alia*, praying therein to refer the matter to a bench of five judges of the Hon'ble Supreme Court of India in view of the provisions embodied in Article 145 (3) of the Constitution. Finally, the review petitions came to be dismissed by order dated 12th March, 2013.

4. Before filing of the Special Leave Petition in the Hon'ble Supreme Court of India, the matter was referred to the Committee of Privileges by me by order dated the 5th October, 2012. The said reference was made to the Committee of Privileges in consonance with the provisions contained in Sub-Rule (4) of the Rule 7 of the Rules 1987. After dismissal of the review petitions and in order to comply with the kind orders of Hon'ble High Court for the disposal of the petition, the matter earlier referred to the Committee of Privileges was withdrawn by me by order dated the 21st March, 2013. The said order was passed to avoid delay in conclusion of the proceedings pending before me.

The matter was directed to be placed before me on 25th March, 2013 on which date order was passed requiring the presence of the parties on 12th April, 2013 for personal hearing.

**5.** Pursuant to notice issued by the Office, the petitioner and the four respondent M.L.As appeared before me on 12th April, 2013 through their respective Advocates to participate in the personal hearing. On 12th April, 2013 the learned counsel for the respondent M.L.As., Shri Upendra Kumar Samal prayed for filing of an additional comments (counter affidavits) in the matter. The learned advocate for the petitioner also prayed that after receipt of the additional comments, if required, he may also file his rejoinder. On the request of the counsels for the parties the matter was directed to be taken up on 22nd April, 2013 at 11 AM for filing of additional counter by the respondent M.L.As. and rejoinder by the petitioner. On 22nd April, 2013, learned counsel for both the parties appeared when the matter was taken up for hearing. On the said date four separate Misc. Cases were filed by the respondent M.L.As under Sub-Rule (2) of Rule 7 of the Rules 1987 for dismissal of the disqualification petitions for non-compliance with the requirement of Rule 6 of the above Rules. Sri Agrawal, learned counsel for the petitioner filed a time petition praying to allow him one week time to file his objection to the said Misc. Cases. On the said date the respondent also filed four separate additional counter affidavits, copies of which were served on the learned counsel for the petitioners. The counsel for the petitioners also prayed for one week time to file his rejoinder to the said additional counter affidavits. On the consent of the parties the matter was posted to 2nd May, 2013 at 3 PM for further hearing. Accordingly, hearing was taken up today in my office chamber in presence of the counsels for the parties. Hearing was taken up of the four Misc. Cases filed by the respondents registered as Misc. Case Nos. 1,2,3 and 4 of 2013. Since all the four Misc. petitions involved common question of law and fact they were taken up analogously for common hearing with the consent of the counsels appearing for the parties.

**6.** I have heard Mr. U. K. Samal, learned counsel for the respondent M.L.As. Shri Amar Prasad Satpathy, Sri Prasanta Nanda, Sri Nabin Nanda and Sri Ram Chandra Hansdah who are the petitioners in the Misc. Case Nos. 1,2,3 and 4 of 2013 respectively. I have also heard Mr. Gopal Agrawal, learned counsel for Sri Utkal Keshari Parida the petitioner in all the four disqualification petitions and opposite parties in the aforesaid Misc. Cases. Sri Samal, learned counsel for the four M.L.As who are the petitioners in the Misc. Cases referring to the provisions contained in Sub-Rules (1), (6) and (7) of Rule 6 of Rules 1987 strenuously contended that the disqualification petitions suffer from gross infirmity and material defect for which these are liable to be dismissed at the threshold as per

Sub-Rule (2) of Rule 7 of the Rules 1987. Referring to the Annexures enclosed as **Annexure-1** series to the disqualification petitions Sri Samal also argued that none of the Annexures which are newspaper clippings published in different Odia and English dailies have either been signed by the opposite parties – petitioner or have been verified in the manner as the petition. Referring to Sub-Rules (1), (6) and (7) of Rule 6, Shri Samal pointed out that the aforesaid Rules which have statutory flavour clearly provide that no reference of any question as to whether a Member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member in accordance with the provisions of these Rules. Relying upon Sub-Rules (6) and 7 of Rule-6, it was further argued that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedures, 1908 (5 of 1908) for the verification of pleadings. Similarly, Sub-Rule (7) of Rule 6 further says that every Annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. Referring to the different Annexures marked as annexure 1 series to the petition filed before me, copies of which were also supplied to the respondent MLAs for their comments. Shri Samal pointed out that not a single Annexure of Annexure 1 series has either been signed by the petitioner or has been verified in the manner laid down in the Civil Procedure Code. Therefore, the petitions are liable to be dismissed in view of the specific statutory provision provided for in Sub-Rule (2) of Rule 7 of the Rules 1987.

7. On the other hand Mr. Gopal Agrawal learned counsel for the petitioner- opposite party in the Misc. Petitions seriously refuted the contention raised by the respondent MLAs. Shri Agrawal argued with vehemence that the respondents are estopped to raise such questions at a belated stage and even if the Annexures have not been signed and verified the petitions cannot be dismissed by the Speaker in view of the mandate of the Tenth Schedule. He further argued that even if the Annexures are completely ignored, the petition cannot be dismissed. Both the counsels in support of their contentions have referred to the provisions of the 10th Schedule to the Constitution of India, different Rules contained in Rules 1987, the pleadings in the disqualification petitions and the Annexures annexed thereto. I have patiently and diligently heard both the parties at length. In the context of the argument advanced by both the parties, I have to examine the merits of the Misc. petitions filed by the four respondent MLAs with reference to different provisions contained in the Rules 1987. The 10th Schedule was engrafted in the Constitution vide Constitution (52nd Amendment) Act, 1985. Para. 6 of the 10th Schedule vests power with the Speaker for deciding the question of disqualification of the Members of a House with a finality clause attached to it. While vesting the onerous constitutional responsibility, the

Speaker was conferred with the rule making power for giving effect to the provisions of the said Schedule and in particular and without prejudice to the generality of the other provisions of the 10th Schedule such Rules may provide for amongst other things the procedure for deciding any question referred to in Sub paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question. Sub-Para. (2) of Para. 8 envisages that the Rules made by the Speaker of a House under Sub paragraph (1) of paragraph 8 shall be laid as soon as may be after they are made before the House for a total period of 30 days which may be comprised in one Session or in two or more successive Sessions and shall take effect upon the expiry of the said period of 30 days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect. Sub-Para (3) of Para. 8 says the Speaker of a House may, without prejudice to the provisions of Article 105 or, as the case may be, Article 194, and to any other power which he may have under this Constitution direct that any willful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.

**8.** On a careful reading of the aforesaid constitutional provisions it is abundantly clear that the Rules framed in exercise of the powers conferred under Para. 8 is not a solitary action of the Speaker but the Rules have the approval of the House, i.e., Odisha Legislative Assembly. Any willful contravention or violation of the Rules framed under Para. 8 may attract penalty like breach of privilege of the House as per the scheme of the Constitution. The Speaker being a creature of the Constitution and law and the Rules having been approved by the House is bound by the said Rules and cannot make a departure from the same.

**9.** In exercise of the powers conferred by Para. 8 of the 10th Schedule a set of Rules were made by the Speaker which had the approval of the Odisha Legislative Assembly in the name and style of "The Members of Odisha Legislative Assembly (Disqualification on ground of defection) Rules, 1987. Rule 6 of the said Rules deals with reference of question regarding disqualification under the 10th Schedule amongst other things. For brevity Rule 6 is reproduced herein below;

"6. (1) No reference of any question as to whether a Member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such Member made in accordance with the provisions of this Rule.

(2) A petition in relation to a Member may be made in writing to the Speaker by any other Member:

Provided that a petition in relation to the Speaker shall be addressed to the Secretary.

(3) The Secretary shall—

(a) as soon as may be after the receipt of a petition under the proviso to sub-rule (2) make a report in respect thereof to the House; and

(b) as soon as may be after the House has elected a Member in pursuance of the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule place the petition before such Member.

(4) Before making any petition in relation to any Member, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such Member has become subject to disqualification under the 10th Schedule.

(5) Every petition,—

(a) shall contain a concise statement of the material facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such persons and the gist of such information as furnished by each such person.

(6) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.

(7) Every Annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

**10.** Rule 7 of Rules 1987 deals with the procedure. For adjudication of the Misc. petition before me Sub-Rules (1) and (2) of Rule 7 is required to be referred to which is quoted herein below:

7. (1) On receipt of a petition under rule 6, the Speaker shall consider whether the petition complies with the requirements of that rule.

(2) If the petition does not comply with the requirements of Rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly.

On a careful examination of the provisions contained in sub rules (1), (6) and (7) of Rule 6 it would give rise to the irresistible conclusion that a petition shall be made in accordance with the provisions of these rules, every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 for the verification of the pleading and every Annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. The consequences of non compliance with the provisions of Rule 6 have been provided in sub rule (2) of Rule 7. The said sub rule clearly postulates that if the petition does not comply with the requirement of Rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly. Order 6 Rule 15 of the Code of Civil Procedure provides for verification of pleadings. The said rules provide amongst other the manner in which a party to a petition shall verify the pleadings. The provisions contained in order 6 Rule 15 Civil Procedure Code make it clear that a person verifying shall specify by reference to the numbered paragraphs of the pleading what he verified of his own knowledge and what he verified from the information received and believed to be true. The verification shall also be signed by the person making it and shall state the date on which and the place at which it was signed. The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

11. I have carefully examined each of the Annexures attached to the four disqualification petitions as Annexure-1 series. Not a single Annexure of Annexure 1 series of all the four petitions has either been signed or has been verified in the manner laid down in the Civil Procedure Code as required under sub Rule (7) of rule 6. Though Shri Agrawal, learned counsel for the petitioner argued that it is a curable defect neither any steps has been taken to cure those defects nor any petition is forth coming on record to say that the annexures be ignored. The Annexure-1 series which forms a part of the pleading thus have to be examined in the light of provisions contained in sub rule (7) of rule (6) of Rules 1987.

12. Shri Samal, learned counsel for the respondent MLAs placing reliance on various judgment of the Apex Court argued that if a statute prescribes a particular procedure to be followed, the thing must be done in that way or not at all. Referring to the judgment of the Privy Council rendered in the case of **Nazir Ahmed Vs. King Emperor, AIR 1936 Privy Council 253**, Mr. Samal argued that if power is conferred by a statute to do a certain thing in a certain way, the thing must be done that way or not at all. Other methods of performance are necessarily forbidden. The view taken by the Privy Council in Nazir Ahmed (Supra) has been followed in a catena of judgments of the Hon'ble Supreme

Court viz. **State of Uttar Pradesh Vs. Singhara Singh, AIR 1964 SC 358, Babu Verghese and others vs. Bar Council of Kerala and others AIR 1999 SC 1281.**

13. Sri Samal relying on a recent judgment of the Hon'ble Supreme Court in the case of **P.A. Sangama Vs. Pranab Mukherjee 2013 (2) SCC 239** further argued that non- signing and non verification of the Annexures annexed as Annexure- 1 series renders the disqualification petition vitiated in law. The Hon'ble Supreme Court in P.A. Sangama's case (Supra) in paras 38, 41, 67 and 68 held as follows:—

“38. On a different note, Mr Salve pointed out from the election petition itself that the allegations made in Para-2 (xvi) were verified by the petitioner, both in the verification and the affidavit affirmed on 20th August, 2012, as being true and correct on the basis of information received and believed to be correct. Mr. Salve submitted that under Rule 6 of Order 39 of the Supreme Court Rules, allegations of fact contained in an election petition challenging a Presidential Election were required to be verified by an affidavit to be made personally by the petitioner or by one of the petitioners, in case there were more than one, subject to the condition that if the petitioner was unable to make such an affidavit for the reasons indicated in the proviso to Rule 6, a person duly authorized by the petitioner would be entitled, with the sanction of the Judge in Chambers, to make such an affidavit. Mr. Salve submitted that in the instant case there was no such occasion for the verification to be done by the petitioner.

41. Mr. Salve submitted that having regard to the submissions made on behalf of the parties, the election petition filed by Shri Purno Agitok Sangma did not deserve a regular hearing, as contemplated in Rule 20 of Order 39 of the Supreme Court Rules, 1966, and was liable to be dismissed.

67. We are not convinced that in the facts and circumstances of the case, the election petition deserves a full and regular hearing as contemplated under Rule 20 of Order 39 of the Supreme Court Rules, 1966. Consequently, Mr Jethmalani's submissions regarding the applicability of Section 141 of the Code of Civil Procedure for trial of the election petition is of no avail. We are also not convinced that Section 141 of the Code is required to be incorporated into a proceeding taken under Order 39 of the Supreme Court Rules read with Part III of the Presidential and Vice-Presidential Elections Act, 1952, which includes Sections 14 to 20 of the aforesaid Act and Article 71 of the Constitution of India.



68. It may not be inappropriate at this stage to mention that this Court has repeatedly cautioned that the election of a candidate who has won in an election should not be lightly interfered with unless the circumstances so warrant.”

14. Referring to the said judgment Shri Samal argued that since the Annexures have neither been signed nor verified in the manner laid down in the Code of Civil Procedure, the petitions are liable to be dismissed in view of the provisions contained in sub rule (2) of Rule 7. On the other hand, Shri Agrawal, learned counsel for the opposite party in the Misc. Cases relied upon the judgments of the Hon'ble Supreme Court rendered in **Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and others, 2004 (8) SCC 747** and argued that the provisions contained in Rules 1987 are directory in nature and even if the Annexures have not been signed and verified in the manner laid down in the Civil Procedure Code, the petition cannot be dismissed. In Mahachandra Prasad Singh's case the Hon'ble Supreme Court was dealing with the presentation of a petition by an aggrieved party namely Shri Salman Rageev with reference to the rules contained in Rule 6 of Bihar Legislative Council Members (Disqualification on ground of defection) Rules, 1994. In paragraph 17 and 18 of the said judgment the Hon'ble Supreme Court has dealt with the signature and verification part of the petition filed therein in the following manner:—

“17. The petition filed by Shri Salman Rageev was signed and verified in the following manner:

“All the facts stated in this petition are true and correct to my knowledge and belief and no part of it is false. Sd/- (Salman Rageev) MLC 10th June, 2004”

In Para. 18 of the judgment, Hon'ble Supreme Court has clearly held as follows:—

18. There can not be any dispute that sub-rules (1), (2) and (3) of Order 6 Rule 15 CPC were complied with. Learned counsel for the petitioner has, however, laid great emphasis on the fact that Shri Salman Rageev had not filed any affidavit in support of his petition and consequently the provisions of sub-rule(4) of Order 6 Rule 15 CPC which provides that the person verifying the pleadings shall also furnish an affidavit in support of his pleadings were not complied with. For the reasons stated earlier, we are of the opinion that the provisions of Rules 6 and 7 are directory in nature and on Account of non-filing of an affidavit as required by sub-rule (4) of Order 6 Rule 15 CPC, the petition would not be rendered invalid nor would the assumption of jurisdiction by the Chairman on its basis be adversely affected or rendered bad in any manner. A similar contention was raised before a Bench presided

by Venkatachaliah, C.J. in Ravi S. Naik v. Union of India but was repelled. The relevant portion of Para. 18 of the Report is being reproduced below:—

(SSC pp. 652-53)”

**15.** Therefore, from the facts revealed from Dr. Mahachandra Prasad Singh’s case it is clear that the petition presented therein was signed and verified and sub-rules (1), (2) and (3) of Order 6 Rule 15 of Civil Procedure Code were complied with. But in the instant case none of the Annexures have either been signed or verified in any of the disqualification petitions. In Dr. Mahachandra Prasad Singh’s case it was a case of substantial compliance. But in the present case the Annexures which are required to be signed and verified in the manner laid down in the Civil Procedure Code have neither been signed nor verified in the manner laid down in the Civil Procedure Code. The facts in Mahachandra Prasad Singh’s case and the facts of the present case are completely distinct and different. In Mahachandra Prasad Singh’s case it was a case of substantial compliance whereas in the present case it is a case of total and complete non-compliance. Therefore, on the peculiar facts and circumstances of the present case the decision cited by Shri Agrawal is clearly distinguishable and is not applicable to the present case.

**16.** On careful examination of the submissions and rival submissions and after through examination of the documents filed as Annexure-1 series to the four disqualification petitions, I have no hesitation to hold that the Annexure-1 series do not comply with the statutory requirements of sub-rules (1) and (7) of Rule 6 of the Rules 1987. Therefore, the disqualification petitions have not been filed as per the rules and the continuance of the same will be gross abuse and misuse of the constitutional provision.

#### **O R D E R**

In the result, I allow the four Misc. cases and in consequence thereof I also dismiss the four disqualification petitions under sub-rule (2) of Rule 7 of Members of Odisha Legislative Assembly (Disqualification on ground of defection) Rules, 1987 for non-compliance with the provisions of sub- rule (7) of Rule 6 of the Rules, 1987.

No order as to cost.

**PRADIP KUMAR AMAT**  
SPEAKER  
ODISHA LEGISLATIVE ASSEMBLY ”

**AMIYA KUMAR SARANGI**  
S E C R E T A R Y  
ODISHA LEGISLATIVE ASSEMBLY